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Written statement* submitted by the International Organization for the Elimination of All Forms of Racial Discrimination (EAFORD), a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[16 January 2016]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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The Refugee Crisis in Europe: De Facto Discrimination against Refugees and Migrants in European Union Countries

Thousands of refugees undertake a perilous journey of thousands of miles from the Syrian Arab Republic, Iraq, Afghanistan, Eritrea, or Somalia, to European Union (EU) countries such as France, Germany, Sweden and the United Kingdom. On this arduous and hazardous trek, they are constantly risking their life, facing the danger of death itself in order to escape poverty, catastrophe, and destruction in their country of origin. When they have arrived in the EU after overcoming the overwhelming odds, it might seem to them that they are finally safe from the chaos they escaped. However, upon arrival, they are prone to various difficulties, such as unemployment, the lack of health services, education, housing, provisions, language barriers, harassment, social exclusion, and victimization. They might also face a problem that has plagued Europe for years: the problem of discrimination against migrants and refugees as a result of prejudice and stereotypes.

Migrants and refugees experience multi-manifestations of *de facto* discrimination. As highlighted in the Durban-Declaration-and-Programme-of-Action (DDPA), "we recognize that xenophobia against non-nationals, particularly migrants, refugees and asylum-seekers, constitutes one of the main sources of contemporary racism. Human rights violations against members of such groups occur widely in the context of discriminatory, xenophobic and racist practices."[1] In light of the recent refugee crisis and European refugee quota scheme, EU states are called to fulfill their obligation under international human rights law to respect, protect, and fulfill the right of equality and non-discrimination to all members of society, including refugees. They should not only ensure that there is no *de jure* discrimination, but also undertake positive measures to eliminate *de facto* discrimination.

One of the major problems in relation to discrimination against migrants and refugees is hate speech. For instance, in the Netherlands, the right-wing politician Geert Wilders characterized the recent refugee crisis as an "Islamic invasion", and claimed that there are "masses of young men in their twenties with beards singing *Allahu Akbar* across Europe. It's an invasion that threatens our prosperity, our security, our culture and identity."[2] While this claim is misapprehended since some of these refugees are also of Christian origin, this sort of statement demonstrates the discriminative attitude of some segments of society against refugees from the Middle East; the Slovakian Prime-Minister even stated that it would only accept Christian refugees from Syrian Arab Republic.[3]

Aside from this prejudice, the Special Rapporteur on the human rights of migrants, François Crépeau, also observed that immigrants are often portrayed as being 'illegal', 'job stealers', and 'a

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[1] World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance para 16.

[2] Yoruk Bahceli, 'Wilders Tells Dutch Parliament Refugee Crisis is 'Islamic invasion'' (*Reuters*, 10 September 2015) <http://www.reuters.com/article/2015/09/10/us-europe-migrants-netherlands-idUSKCN0RA0WY20150910> accessed 22 September 2015.

[3] Rick Lyman, 'Eastern Bloc's Resistance to Refugees Highlights Europe's Cultural and Political Divisions' (*New York Times*, 12 September 2015) <www.nytimes.com/2015/09/13/world/europe/eastern-europe-migrant-refugee-crisis.html> accessed 22 September 2015.

burden'.[4] Particularly with regards to the first view, he found that "the conceptualization of irregular migrants as 'illegal' (...) had an impact on the general public's perception of migrants, legitimizing policies that are not in line with human rights guarantees and contributing to xenophobia and discrimination".[5] Meanwhile, although the claim of immigrants as 'job stealers' and 'a burden' had been debunked in the Special Rapporteur's report,[6] they are still often invoked as an excuse to justify racism.

Migrants also face discrimination in the economic sector. As pointed out, "migrants report discrimination by their employers, on many grounds such as nationality, race and sex, with regard to, inter alia, remuneration, excessive overtime, opportunities for promotion, access to health care and unfair dismissals. (...) Migrants, both regular and irregular are often employed under precarious and discriminatory conditions, with temporary contracts that do not entitle them to access social security services. They sometimes suffer verbal, physical and sexual abuse in the workplace".[7] A study by Rafaela Dancygier and David Laitin also found that "migrants who do manage to settle in host countries often face barriers when trying to advance economically. In many receiving states, first and second generation immigrants have higher unemployment rates and earn lower wages than do natives".[8] A joint publication by the International Labor Organization (ILO), the International Organization for Migration (IOM), and the Office of High Commissioner of Human Rights (OHCHR) further demonstrates that "comparative data on unemployment figures measuring different rates between national and employment-authorized non-national members of the work force may provide telling indications of discrimination in employment."[9]

These reports demonstrate the problem of *de facto* discrimination refugees might face when settling in EU countries. EU states are reminded of their ratification of the International-Convention-on-Civil-and-Political-Rights (ICCPR), the International-Convention-on-Economic-Social-and-Cultural Rights (ICESCR), and the International-Convention-on-the-Elimination-of All-Forms-of-Racial-Discrimination (ICERD). Of particular importance are Article-2(1) and 26 of the ICCPR, Article-2(2) of the ICESCR, and Article-2 of the ICERD. Specifically with regards to the issue of *de facto* discrimination that migrants face in the economic sector, Article-2(2) of the ICESCR requires states to guarantee that the economic, social, and cultural rights enshrined in the ICESCR are exercised "without discrimination of any kind as to race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."[10] Article-5 of the ICERD even explicitly requires states to prohibit and eliminate racial discrimination in the exercise of economic, social, and cultural rights, including the right to work.

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[4] UNHRC 'Report of the Special Rapporteur on the human rights of migrants, François Crépeau: Banking on mobility over a generation: follow-up to the regional study on the management of the external borders of the European Union and its impact on the human rights of migrants' A/HRC/29/36 para 71-74.

[5] ibid.

[6] ibid.

[7] UNHRC 'Report of the Special Rapporteur on the human rights of migrants, François Crépeau: Labour exploitation of migrants' A/HRC/26/35, para 33.

[8] Rafaela M. Dancygier and David D. Laitin, 'Immigration into Europe: Economic Discrimination, Violence, and Public Policy' [2014] 17 Annual Review of Political Science 43, 44.

[9] International Labor Organization, International Organization for Migration, Office of High Commissioner of Human Rights, *International Migration, Racism, Discrimination and Xenophobia* (2001) 14.

[10] International Covenant on Economic, Social and Cultural Rights, (entered into force 3 January 1976) 993 UNTS. 3 (ICESCR) art 2(2).

The Committee-on-Economic-Social-and-Cultural Rights (CESCR) recommended that states should "strengthen measures to overcome the obstacles faced by persons of immigrant background, in particular women, in accessing the labor market".[11] Meanwhile, on the issue of the presence of hate speech against refugees, Article-4 of the ICERD obliges states to "condemn all propaganda and all organizations (...) which attempt to justify or promote racial hatred and discrimination in any form, and undertake to adopt immediate and positive measures designed to eradicate all incitement to, or acts of, such discrimination and, to this end, with due regard to the principles embodied in the Universal-Declaration-of-Human-Rights (UDHR) and the rights expressly set forth in article-5 of this Convention".[12] The CESCR has further recommended state parties "to intensify efforts to create a culture of tolerance and to eliminate all forms of discrimination, in so far as they affect women, Roma, asylum seekers and immigrants."[13]

Thus, under international human rights law, states are obligated to undertake both positive and negative measures to ensure the right of non-discrimination of refugees.[14] Moreover, EU states are called to ratify the International-Convention-on-the-Protection-of-the-Rights-of-All-Migrant-Workers-and-Members-of-Their-Families. It is regrettable that these states, who have confirmed "their attachment to (...) respect for human rights and fundamental freedoms",[15] have failed to undertake this step. This convention would have provided further protection for refugees and their families.

In conclusion, founded on the values of human rights and the rule of law,[16] it is the duty of EU Member States to adhere by their obligations, as mandated by the ICCPR, ICESCR, and ICERD. They should also ratify the UN Migrants Convention to provide more protection for refugees. In the end, as was famously affirmed by the UDHR, "all human beings are born free and equal in dignity and rights."[17] Thus, EU states should ensure that those who have faced unimaginable catastrophes in their homeland will not be treated as second-class citizens during their residency, as discrimination will be another ordeal for them whose dignity and rights have been severely violated. This refugee crisis raises issues that might be construed as a test case of EU's commitment to respecting refugees' rights and nations' obligations under international law.

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[11] Committee on Economic, Social and Cultural Rights, 'Concluding observations of the Committee on Economic, Social and Cultural Rights (Norway)' UN Doc. E/C.12/1/Add.109 para 28.

[12] International Convention on the Elimination of All Forms of Racial Discrimination, entered into force 4 January 1969) 660 UNTS 195 (ICERD) art 5.

[13] UNHRC 'Concluding observations of the Committee on Economic, Social and Cultural Rights (Portugal)' UN Doc. E/C.12/1/Add.53 para 18.

[14] See Wouter Vandenhole, *Non-Discrimination and Equality in the View of the UN Human Rights Treaty Bodies* (Intersentia 2005) 187-240.

[15] See Consolidated Version of the Treaty on European Union [2008] OJ C115/13 art 2.

[16] ibid.

[17] Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III) (UDHR) art 1.